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PATENT APPLICATION
Docket No. 16274.159a

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of)
)
	Martin Weigert et al.)
)
Serial No.:	10/811,102) Art Unit
) 2874
Filed:	March 26, 2004)
)
For:	ELECTROOPTICAL MODULE)
)
Confirmation No.:	9738)
)
Customer No.:	022913)
)
Examiner:	Omar R. Rojas)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop **Appeal**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

ARGUMENTS

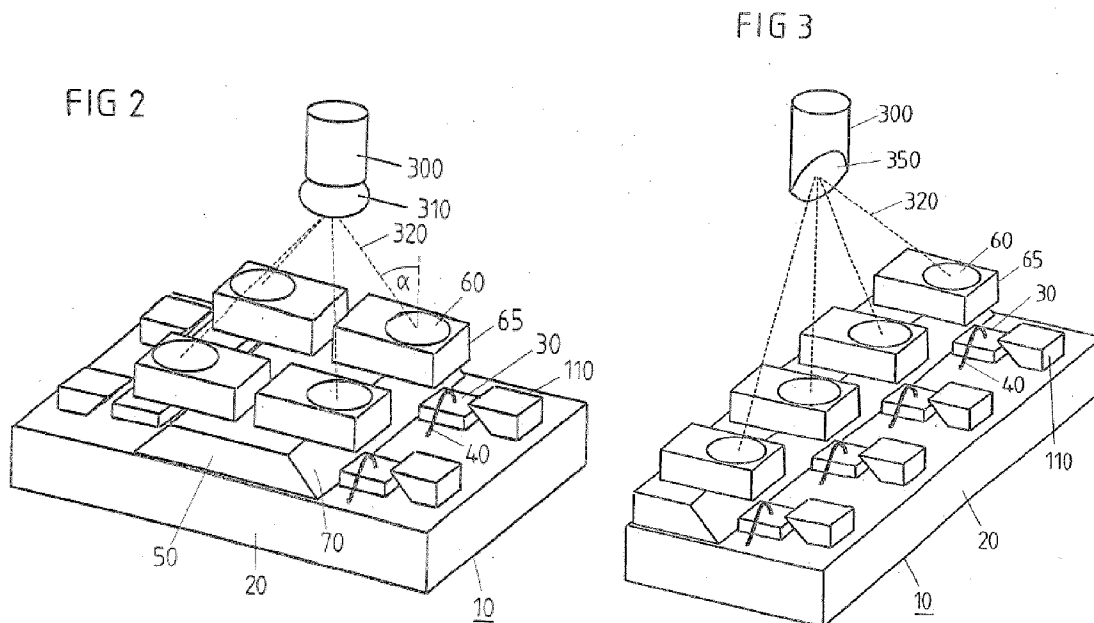
Reconsideration of the application by a panel of examiners is respectfully requested in view of the following remarks. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the clear errors and omissions in the rejections. In addition, Applicants request that the Panel carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Panel's understanding.

I. PRIOR ART REJECTIONS

A. Rejection Under 35 U.S.C. §102(e)

The Examiner rejects claims 1, 2, 4, 5, 8, 9, 13, 14, 25 and 27-29 under 35 U.S.C. § 102(e)¹ as being anticipated by *Wilson* (United States Patent No. 6,921,214). Applicants cite to clear error as *Wilson* does not teach every element of the claims.

Claim 1 includes the element, wherein “an optical axis of emergent light from each of the at least one lens intersects an end of the optical waveguide or another lens at about the same point....” (Emphasis added). Similarly, claim 27 includes the element, wherein “an optical axis of emergent light from each of the at least one lens direct intersects an end of the optical waveguide or another lens at about the same point....” (Emphasis added). Examples of these elements are illustrated by the path of rays 320 shown in Figures 2 and 3 from lenses 60 to waveguide 300 or lens 310 of the Applicant’s disclosure reproduced below.



¹ Because *Wilson* is only citable under 35 U.S.C. § 102(e) Applicants do not admit that *Wilson* is in fact prior art to the claimed invention but reserve the right to swear behind *Wilson* if necessary to remove it as a reference.

On page 4 of the Final Office Action, the Examiner identifies elements 110A-110D collectively as an optical waveguide in *Wilson*. Figure 1 of *Wilson* is reproduced below.

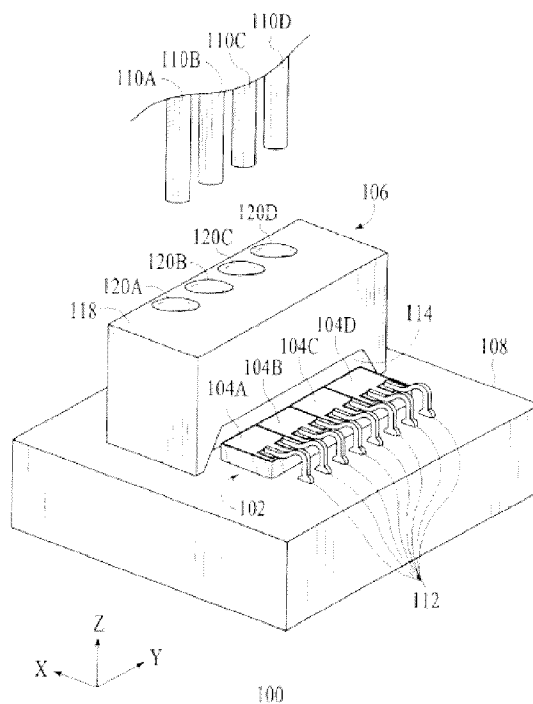


FIG. 1

According to *Wilson*, “the optical turning element [106] is configured to focus the output light from each of the edge emitting lasers [104A-D] so that the output light from each of the edge-emitting lasers so that the output lights from the edge-emitting lasers are properly transmitted to the respective optical fibers 110A, 110B, 110C, and 110D.” Col. 3, lines 36-40 (emphasis added); see also col. 5, lines 24-32.

Thus, *Wilson* discloses that light emerging from each of the lenses 120A-D is received by a respective one of the optical fibers 110A-D, and therefore, is not at about the same point as required by claims 1 and 27. As such, the Applicant cites to clear error as at least these elements of claims 1 and 27 are not taught by *Wilson*.

In addition, on page 5 of the office action, the Examiner alleges that the “electrooptical module (100) inherently comprises a WDM module because it has the same physical structure to

that claimed.” The Applicant respectfully disagrees that *Wilson* inherently discloses a WDM module. According to the *Fiber Optics Standard Dictionary*², :

wavelength-division multiplexing (WDM). In fiberoptics when referring to light-waves, multiplexing that is similar to frequency-division multiplexing, a multiplexing system in which the available transmission wavelength range is divided into narrow bands and each is used as a separate channel. Because an optical fiber can transmit more than one wavelength of light at the same time, each wavelength can be separately modulated and used as a separate transmission channel as long as a combination of dispersive components, such as prisms, and photodetectors on the receiving end are wavelength-sensitive or spatially distributed for demultiplexing.

(Emphasis added).

Wilson does not discuss or relate to WDM as *Wilson* does not discuss using signals of different wavelengths to transmit data across a single waveguide. Rather, each signal in *Wilson* is transmitted across a separate optical fiber 110A-D making the need for WDM unnecessary. “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”³ Thus, the Applicant cites to clear error as *Wilson* fails to disclose a WDM module, neither explicitly nor inherently.

At least for the same reasons as set forth above regarding claims 1 and 27, the Applicant respectfully requests that the Panel withdraw the rejection of claims 2-9 and 11-13, 15-26, 28, and 29.

Claim 14 requires “a supporting element that is reflectively coated on its outer side or outer sides assigned to the laser or the lasers, the supporting element and the reflectively coated outer side or sides being arranged in such a way that they reflect the light emitted by the laser or by the lasers about 90 degrees onto the respectively assigned lens.” (Emphasis added). However, in *Wilson* the reflective surface 116 is angled 59.9 degrees resulting in an angle of reflection greater than about 90 degrees as claimed. See Figure 3 and col. 4, lines 45-46.

² Martin H. Weik, D.Sc., Van Nostrand Reinhold (1989).

³ *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1269 (Fed. Cir. 1991).

The Examiner rejects claims 1-5, 8, 9, 11-13 and 25 under 35 U.S.C. § 102(e)⁴ as being anticipated by *Trezza* (United States Patent No. 6,731,665). Regarding claim 1, on page 6 of the Office Action, the Examiner asserts that “the electrooptical module of *Trezza* inherently comprises a WDM module because it has the same physical structure to that claimed.” The Applicant cites to clear error as *Trezza* does not inherently comprise a WDM module as alleged.

Trezza discloses a pump laser configured to couple individual lasers in an array to an individual optical fiber. *See* Abstract. The optical amplifiers disclosed in *Trezza* add energy to signals but do not actually transfer signals. *See* col. 1, lines 33-49; col. 5, lines 10-14; col. 5, lines 25-28. Moreover, *Trezza* does not discuss or refer to signals of various wavelengths to be multiplexed. Thus, *Trezza* does not relate to, nor does *Trezza* inherently disclose, a WDM module.

Claim 1 requires that “the electrooptical module comprises a WDM module.” Since *Trezza* does not teach a WDM module in combination with each and every other element of claim 1, the Applicants respectfully cite to clear error. At least for the same reasons, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 2-9 and 11-13, 15-26, and 29.

CONCLUSION

In view of the foregoing, Applicants believe the claims are in allowable form. In the event that the Panel finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner’s Amendment, the Panel is requested to contact the undersigned attorney.

Dated this 28th day of September, 2007.

Respectfully submitted,

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⁴ Because *Trezza* is only citable under 35 U.S.C. § 102(e) Applicants do not admit that *Trezza* is in fact prior art to the claimed invention but reserve the right to swear behind *Trezza* if necessary to remove it as a reference.